

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES P.E. O'NEEL, AN  
INDIVIDUAL,

Plaintiff,

v.

CHEWELAH BASIN SKI CORP. DBA  
49 DEGREES NORTH,

Defendant.

No. 2:16-CV-0018-SMJ

**ORDER DISMISSING  
CHEWELAH BASIN SKI CORP.  
DBA 49 DEGREES NORTH AND  
CERTIFYING ORDER AT ECF  
NO. 39 AS A FINAL JUDGMENT  
FOR APPEAL**

On August 19, 2016, the parties filed a stipulated dismissal, ECF No. 41. The parties stipulated to: (1) Plaintiff reserving “all rights to appeal regarding the underlying decision with respect to the United States of America” and (2) dismissing the remaining Defendant, Chewelah Basin Ski Corp. dba 49 Degrees North, without prejudice. *Id.*

In order to effectuate the parties’ intent, this Court must enter an order approving their agreement since (1) an answer has been filed in this case and (2) the parties agreed to preserve Plaintiff’s appeal rights. *Id.*; ECF No. 13; Fed. R. Civ. P. 41(a)(1), 41(a)(2), and 54(b); *Concha v. London*, 62 F.3d 1493, 1506-07 (9th Cir. 1995) (“Once the defendant files an answer or a motion for summary

1 judgment, the plaintiff may no longer voluntarily dismiss without a court order  
2 under Rule 41(a)(1), but must file a motion for voluntary dismissal under Rule  
3 41(a)(2). Court approval of a Rule 41(a)(2) motion is required.”). Although the  
4 parties did not style their stipulation as a motion under Rule 41(a)(2), what they  
5 seek requires dismissing and closing this case as no Defendant remains, so the  
6 Court follows Rule 41(a)(2).

7 Moreover, the Court clarifies that its decision granting the United States’  
8 Motion to Dismiss for Lack of Jurisdiction and dismissing claims against the  
9 United States without prejudice is a final judgment for purposes of appeal. ECF  
10 No. 39; Fed. R. Civ. P. 54(b); *see* 10 Charles Alan Wright & Arthur Miller,  
11 *Federal Practice and Procedure* § 2654 (3d ed. 2016). Therefore, Plaintiff may  
12 appeal that decision.

13 As such, **IT IS HEREBY ORDERED:**

14 **1.** The parties’ Stipulation of Dismissal of Chewelah Basin Ski Corp.  
15 dba 49 Degrees North, **ECF No. 41**, is **GRANTED**.

16 **2.** Defendant Chewelah Basin Ski Corp. dba 49 Degrees North is  
17 **DISMISSED WITHOUT PREJUDICE**.

18 **3.** All claims are **DISMISSED WITHOUT PREJUDICE**, with all  
19 parties to bear their own costs and attorneys’ fees.

20 **4.** All pending motions are **DENIED AS MOOT**.

6. The Clerk's Office is directed to **CLOSE** this file.

**DATED** this 31st day of August 2016.

*Juan Carlos Mendoza*

SALVADOR MENDOZA, JR.  
United States District Judge